

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	FILED	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Central District of California on the following ☒ Patents or ☐ Trademarks:

CV-07 1102	DATE FILED	U.S. DISTRICT COURT
PLAINTIFF	DATE	DEFENDANT
SHANGHAI ELE MANUFACTURING CORPORATION, a Chinese corporation		TECHNOLOGY RESEARCH CORPORATION, a Florida corporation
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		Please see attached copy of Complaint.
2		
3		
4		
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In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT	DOCKETED ON CM
<i>See attached</i>	FEB 27 2009
CLERK	BY
<i>Terry Nafisi</i>	<i>AL</i>
(BY) DEPUTY CLERK	DATE
MADIELINA GUERRERO	FEB - 9 2009

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

SEND, JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 07-1102-RGK (VBKx) Date May 18, 2007
 Title Shanghai Ele Manufacturing Corporation v. Technology Research Corporation

J. CLARK

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) DEFENDANT AND COUNTERCLAIMANT'S
 MOTION TO TRANSFER ACTION TO MIDDLE DISTRICT OF
 FLORIDA (DE 9)

I. INTRODUCTION

On February 16, 2007, Plaintiff Shanghai ELE Manufacturing Corporation ("ELE"), a Chinese Corporation, filed this declaratory judgment suit against Technology Research Corporation ("TRC"), a Florida Corporation. ELE alleges non-infringement and/or invalidity of U.S. Patent No. 6,292,337, which is owned by TRC.

Presently before the Court is TRC's Motion to Transfer Venue under 28 U.S.C. § 1404(a). For the following reasons, the Court grants TRC's Motion.

II. JUDICIAL STANDARD

Pursuant to the federal statute governing transfer of venue, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it may have been brought." 28 U.S.C. § 1404(a). To support a motion for transfer the moving party must show: (1) that venue is proper in the transferor district; (2) that the transferee district is one where the action might have been brought; and (3) that the transfer will serve the convenience of the parties and witnesses and will promote the interest of justice. *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506 (C.D. Cal. 1992) (referring to *Mercury Serv., Inc. v. Allied Bank of Texas*, 117 F.R.D. 421, 454-55 (C.D. Cal. 1987), *aff'd without opinion*, 907 F.2d 154 (9th Cir. 1990)).

III. DISCUSSION

Presently before the Court is Defendants' motion to transfer venue under 28 U.S.C. § 1404(a). Upon consideration of the moving and opposing papers, and for the reasons set forth below, the Court rules as follows.

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BY [Signature] 012

A. Venue Is Proper in the Central District of California

As stated above, to support their Motion to Transfer, Defendants must initially show that venue is proper in the current district. Here, venue is proper in the Central District because a declaratory judgment action for alleged invalidity and non-infringement of a patent may be brought in any district court. 28 U.S.C. 1338(a).

B. This Case Could Have Been Brought in the Middle District of Florida

To support a motion for transfer under § 1404(a), the moving party must also show that the proposed transferee court is one in which the action could have been commenced originally. See *Hoffman v. Blaski*, 363 U.S. 335, 343-44 (1960) "If when a suit is commenced, plaintiff has a right to sue in that district, independently of the wishes of the defendant, it is a 'district where the action might have been brought.'" *Id.* (citations omitted). Here, Plaintiffs could have brought the present action in the Middle District of Florida. ELE had a right to sue in that district independently of the wishes of TRC.

C. Convenience and Justice Warrant Transfer

Section 1404(a) is intended to place discretion in the Court to adjudicate motions for transfer according to an "individualized, case-by-case consideration of convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). The moving party has the burden of showing that the action should be transferred on those grounds. *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). A motion to transfer venue under § 1404(a) thus requires the Court to weigh a number of case-specific factors in its determination of whether transfer is appropriate in a particular case. *Id.*

1. Plaintiff's Choice of Forum Weighs Against Transfer

Unless the balance of factors is strongly in favor of Defendants, Plaintiff's choice of forum is given significant weight and should rarely be disturbed. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). However, "where the forum lacks any significant contact with the activities alleged in the complaint, plaintiff's choice of forum is given considerably less weight, even if the plaintiff is a resident of the forum." *IBM Credit Corp. v. Definitive Computer Servs., Inc.*, 1996 WL 101172, at *2 (N.D. Cal. Feb. 28, 1996); accord *MTS Sys. Corp. v. Hysitron, Inc.*, 2006 WL 2547698, at *3 (N.D. Cal. Sept. 1, 2006).

In the instant case, Defendant contends that California lacks contact with the activities alleged, and therefore, Plaintiff's choice of forum should be given minimal consideration. The Court agrees and, therefore, finds that Plaintiff's choice of forum should be granted "considerably less weight." *IBM Credit Corp.*, 1996 WL 101172, at 2.

2. Convenience of the Parties Favors Transfer

The venue transfer provisions of § 1404(a) are not meant to merely shift the inconvenience to Plaintiff. *Reed Elsevier, Inc. v. Rice Innovator Corp.*, 105 F. Supp. 2d 816, 821 (S.D. Ohio 2000) (internal citation omitted). On balance, however, the Court finds that transferring the case to the Middle District of Florida will not merely shift the inconvenience to Plaintiff.

If the case remains in the Central District of California, both parties will be forced to travel thousands of miles. If the case is transferred to Florida, Defendants, who reside in Clearwater Florida, will not be forced to travel, while the hardship of travel on the Plaintiff will only be increased by a relatively small amount. See *Walker v. Jon Renau Collection, Inc.*, 423 F.Supp.2d 115, 118 (S.D.N.Y. 2005). Other district courts have reached similar conclusions. See *BBC Int'l Ltd. v. Lumino Designs, Inc.*, 441 F.Supp.2d 438, 443 (E.D.N.Y. 2006) (in a declaratory judgment action for non-infringement and invalidity of a patent, transferring where "witnesses . . . have to come from China and other Asian countries, and there is no significant difference in burden by travel to Chicago as opposed to New York."); *Wang v. Lb Int'l*, No. CD4-2475JLR, 2005 U.S. Dist. LEXIS 36555, at 9 (W.D. Wash. Aug. 29, 2005) (transferring despite non-movant's concern that she would be "significantly inconvenienced if forced to travel to eastern United States after already traveling from Taiwan to Seattle," finding that increase in travel time was minimal.)

Accordingly, the Court finds that convenience of the parties favors transfer.

3. Convenience of the Witnesses Favors Transfer

The chosen venue's convenience for the witnesses "is the most important factor in determining whether to transfer because of the inconvenience of the forum." *Hope v. Otis Elevator Co.*, 389 F. Supp. 2d 1235, 1243 (E.D. Cal. 2005); *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 497, 501 (C.D. Cal. 1981). More specifically, "it is the convenience of non-party witnesses, rather than that of party witnesses, that is accorded greater weight in a transfer of venue analysis." *State St. Capital Corp. v. Dente*, 855 F. Supp. 192, 198 (S.D. Tex. 1994).

Here, the arguments for transfer mirror those above concerning the convenience of parties. Witnesses to be called by ELE are for the most part located outside the U.S. As such, it makes little difference whether those witnesses fly to California or to Florida. There may be an increase in flight time, but that increase is not a significant factor. On the other hand, nearly all of the witnesses to be called by TRC are located within the jurisdiction of the Middle District of Florida. Consideration of the convenience of witnesses favors transfer.

4. The Interests of Justice Favors Transfer

The Court finds that the interests of justice favor transfer. Transfer will increase the ease of access to evidence, much of which is located in the Middle District of Florida.

In light of the above, the Court finds that the balance strongly weighs in favor of transferring this case to the Middle District of Florida.

IV. CONCLUSION

In light of the foregoing, Defendants' Motion to Transfer Venue is **GRANTED**.

IT IS SO ORDERED.

Initials of
Preparer

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